

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DENZIL T. MOORE,

Petitioner,

v.

**Case No. 2:06cv71
(Judge Maxwell)**

**FEDERAL BUREAU OF PRISONS,
HARRELL WATTS, KIM M. WHITE,
K.L. WENDT, RICHARD RAMIRIZ,**

Defendants.

**AMENDED ORDER GRANTING MOTION TO AMEND/CORRECT
AND VACATING REPORT AND RECOMMENDATION¹**

On July 13, 2006, *pro se* plaintiff initiated this case by filing a civil rights complaint against the above-named defendants. On October 16, 2006, the undersigned issued a Report and Recommendation that recommended that:

- (1) Plaintiffs' claims under 42 U.S.C. § 1983 be DISMISSED with prejudice;
- (2) Plaintiffs' individual capacity claims be construed as claims arising under Bivens;
- (3) Plaintiffs' official capacity claims be DISMISSED with prejudice;
- (4) Plaintiffs' individual capacity claims against the BOP, Francis, White and Wendt be DISMISSED with prejudice;
- (5) the United States Marshal be directed to serve a copy of the complaint, a completed summons, and a completed Marshal 285 Form on defendant Ramirez; and

¹This order is being entered to add the name of one additional individual, Joyce Francis, who should be terminated as a defendant.

(6) Plaintiffs' request for injunctive relief be DENIED without prejudice.

On October 26, 2006, the plaintiff filed objections to the Report and Recommendation, which are still pending before the Honorable Robert E. Maxwell. On August 24, 2007, the plaintiff filed a Motion to File an Amended Complaint.

Federal Rule of Civil Procedure 15(a) provides that "a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served... Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Here, a review of the file shows that no responsive pleading has been served. Thus, the plaintiff's Motion to Amend (Doc. 20) is **GRANTED** as a matter of course. Furthermore, in light of the fact that the plaintiff's Amended Complaint contains none of the claims or individual defendants that the undersigned had previously recommended be dismissed, it is further ORDERED that the Report and Recommendation (Doc. 10) be **VACATED**. The Clerk is directed to terminate Harrell Watts, Kim M. White, and K.L. Wendt, and Joyce Francis as defendants and add Elizabeth Masteller, Dr. Ellen Mace, Janet Bunts, and Mark Dib as defendants.

IT IS SO ORDERED.

The Clerk is directed to mail a copy of this Order to the *pro se* plaintiff.

DATED: January 3, 2008.

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE